IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 26 OF 1998

Sanjeeva Kampara Pujari ..Appellant

versus

Shakuntala S. Bangera & Ors. ..Respondents

Mr. M. V. Holmagi for the Appellant.

Mr. Xavier, J.J. for the Respondent No.5 - BMC.

CORAM : D. G. DESHPANDE,J.

DATE : 7TH MARCH ,2005

ORAL ORDER :

1. Heard Counsel for the Appellant and Respondent No.5 - BMC.

2. Appellant is the original Defendant No.2. He was in possession of the said premises. The original Plaintiff filed a suit for declaration that plaintiff Nos. 1 to 4 are sole owners of the hotel and pan business, and for further declaration that the licence transferred in the name of the defendant No.2 by the BMC is wrong, illegal and inoperative. They further sought mandatory injunction directing original defendant No.1 - BMC to transfer the said licsence in the name of the Plaintiffs now

Respondents No. 1 to 4.

3. Ultimately the suit of the plaintiffs came to be dismissed. But while dismissing the suit, the trial court gave the following directions:

> **"The Court Receiver, High Court, Bombay, to handover the possession of the suit premises to defendant No.2, who shall hold the suit premises and the suit business for self and on behalf of all other legal heirs of original plaintiff i.e. plaintiffs Nos. i(a) to 1(d) and Defendant No.3."**

This part of the judgment that is challenged by the present Appellant. According to him if the suit is dismissed then there was no justification in giving direction that the defendant No.2 shall hold the suit premises and the suit business on behalf of the legal heirs of the plaintiff. Secondly, he contended that the plaintiff in prayer (b) of the plaint had claimed declaration that the transfer of licence in the name of defendant No.2 by the BMC was bad in law, illegal and inoperative, and, had also sought mandatory injunction to retransfer municipal licences in the plaintiffs name.

4. If the Court had come to the conclusion that the plaintiff was not entitled to any relief then that part of the order, which is opposed by the

appellant, should not have been passed. If the court had come to the conclusion on the basis of the findings of the concerned and relevant issues that the plaintiff was entitled to reliefs in terms of prayer clauses (b) and (c), the court should have specifically and clearly given the reliefs and then the direction would have been appropriate. But when the suit is dismissed in its entirety then in that view of the matter, the direction given that the defendant No.2 shall hold the suit premises for and on behalf of the legal heirs, is wrong.

5. Respondent Nos. 1 to 4 i.e. original plaintiffs have been served with this appeal memo, they have not cared to engage any Advocate, nobody is present for them. Hence, there is no alternative but to allow the appeal.

6. In the result, I pass the following order :

ORDER

. Appeal is allowed. No order as to costs.

. Order of the trial court that Defendant No.2 shall hold the suit premises and the suit business for self and on behalf of all other legal heirs of the original plaintiff i.e. plaintiffs Nos. i(a) to 1(d), is quashed and set aside.

7.03.2005 (D.G. DESHPANDE, J.)